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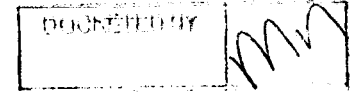
2009 AUG 31 P 3: 58

AZ CORP COMMISSION
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Arizona Corporation Commission

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AUG 31 2009



BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY AT CASA GRANDE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION
OF PALO VERDE UTILITIES COMPANY
FOR AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION
OF SANTA CRUZ WATER COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-03576A-05-0926

IN THE MATTER OF THE APPLICATION
OF PALO VERDE UTILITIES COMPANY
FOR AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. SW-03575A-07-0300

IN THE MATTER OF THE APPLICATION
OF SANTA CRUZ WATER COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-03576A-07-0300

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1 ARIZONA WATER COMPANY, AN
2 ARIZONA CORPORATION,

3 COMPLAINANT,
4 VS.

5 GLOBAL WATER RESOURCES, LLC, A
6 FOREIGN LIMITED LIABILITY
7 COMPANY; GLOBAL WATER
8 RESOURCES, INC., A DELAWARE
9 CORPORATION; GLOBAL WATER
10 MANAGEMENT, LLC, A FOREIGN
11 LIMITED LIABILITY COMPANY; SANTA
12 CRUZ WATER COMPANY, LLC, AN
13 ARIZONA LIMITED LIABILITY
14 CORPORATION; PALO VERDE UTILITIES
15 COMPANY, LLC, AN ARIZONA LIMITED
16 LIABILITY CORPORATION; GLOBAL
17 WATER – SANTA CRUZ WATER
18 COMPANY, AN ARIZONA
19 CORPORATION; GLOBAL WATER –
20 PALO VERDE UTILITIES COMPANY, AN
21 ARIZONA CORPORATION; JOHN AND
22 JANE DOES 1-20; ABC ENTITIES I-XX,
RESPONDENTS.

DOCKET NO. W-01445A-06-0200
DOCKET NO. SW-20445A-06-0200
DOCKET NO. W-20446A-06-0200
DOCKET NO. W-03576A-06-0200
DOCKET NO. SW-03575A-06-0200

18 IN THE MATTER OF THE JOINT
19 APPLICATION OF CP WATER COMPANY
20 AND FRANCISCO GRANDE UTILITIES
21 COMPANY TO TRANSFER THEIR
22 CERTIFICATES OF CONVENIENCE AND
NECESSITY AND ASSETS TO PALO
VERDE UTILITIES COMPANY AND
SANTA CRUZ WATER COMPANY.

DOCKET NO. W-01775A-07-0485
DOCKET NO. SW-03575A-07-0485
DOCKET NO. W-20442A-07-0485
DOCKET NO. W-03576A-07-0485

23 **ARIZONA WATER COMPANY'S**
24 **POST-HEARING RESPONSE BRIEF**

25 Pursuant to the direction of Administrative Law Judge Dwight D. Nodes following
26 the hearing in this matter on June 8-9, 2009, Arizona Water Company submits this Post-
27 Hearing Response Brief. As demonstrated at the hearing and in Arizona Water Company's
28 Opening Brief, the Arizona Corporation Commission ("Commission") should approve the

Settlement Agreement (“Settlement”) entered into between Arizona Water Company and Global Water Resources, LLC and related entities (collectively, “Global”) on May 15, 2008 because the Settlement serves the public interest in numerous ways and Commission approval of the Settlement will provide greater certainty for the parties, for landowners and developers in the relevant area, and for the public in general. The Commission should grant Arizona Water Company’s requested extension of its Certificate of Convenience and Necessity (“CCN”) to the area identified in Arizona Water Company’s amended extension application (“Requested Area”) because of the demonstrated need for water service in that area and because the unrefuted evidence in the record shows that Arizona Water Company is the fit and proper provider of such service to the Requested Area. Further, the Commission should specifically recognize and approve the planning areas (“Planning Areas”) identified in the Settlement because such approval would also benefit the public.

I. CONTRARY TO STAFF’S RECOMMENDATION, THE COMMISSION SHOULD APPROVE THE PARTIES’ SETTLEMENT, INCLUDING THE PLANNING AREAS.

Staff’s summary of the procedural history of this matter and its discussion of the historic Settlement between Arizona Water Company and Global omit several key aspects of these consolidated cases. For example, although Staff begrudgingly acknowledges that the Settlement came at the end of “an arduous procedural journey,” Staff’s Brief at 2, Staff (which had vigorously promoted a settlement among the parties) ignores the enormous savings of resources, costs and time to all parties involved, including the Commission and Staff, if this matter can be settled in a way that serves the public interest. Staff also disregards the unanimous and strong support for the Settlement expressed by various municipalities, developers and other stakeholders, as well as the fact that none of these stakeholders has opposed the Settlement. In fact, the Mayor of Casa Grande has encouraged the Commission to approve the Settlement, CCNs and Planning Areas. Ex. A-2, Garfield Rebuttal Testimony, Ex. WMG-15.

1 Staff also ignores the historic component of the Settlement involving the sale of
2 reclaimed water by Global to Arizona Water Company for distribution within Arizona Water
3 Company's CCN areas. Although Staff argued, prior to and during the hearing, that
4 Paragraph 7(b) improperly restricted the sale of reclaimed water, Staff has now dropped that
5 contention in its Brief. Indeed, issues involved in the sale and distribution of reclaimed
6 water are never mentioned in Staff's Post-Hearing Brief. Staff also ignores the Settlement's
7 beneficial resolution of issues involving the transfer of CCNs belonging to Francisco Grande
8 and CP Water Company.

9 Staff's discussion of the Settlement also completely overlooks Staff's and the
10 Commission's role in actively encouraging the Settlement and the concept of a settlement
11 boundary. Throughout the approximately three and a half years of this litigation, the
12 Commission and Staff consistently encouraged the parties to settle this matter, and the
13 eventual settlement boundary agreed upon by parties was based on the Kortsen Road
14 concept recommended by Staff. It is inconsistent for Staff to now disregard the fact that
15 many of the principal points of the Settlement were based on Staff's own suggestions and
16 recommendations.

17 Staff's arguments against approval of the Settlement are often self-contradictory. For
18 example, Staff contends that the parties have made "vague, general assertions regarding the
19 promotion of conservation of scarce water resources and efficient planning of costly
20 infrastructure." Staff's Brief at 13. Yet, in a clear inconsistency, Staff acknowledged in the
21 prior sentence that the Settlement provided "benefits" by "aiding efforts to plan capital
22 improvements." *Id.* Staff never explains how the pre-filed or live testimony provided by
23 Arizona Water Company's witnesses William Garfield or Fredrick Schneider was "vague,"
24 and Staff never provided any testimony that rebutted the testimony of Arizona Water
25 Company's witnesses. Nor does Staff's lengthy quotation from Staff's Reports, Staff's Brief
26 at 13, advance Staff's argument, because the parties have already refuted those concerns
27 through the testimony of witnesses and briefing.
28

1 Instead of providing clear reasons for not recommending approval of the Settlement,
2 Staff offers an analogy drawn from classical mythology, citing to a 1959 edition of
3 *Bullfinch's* [sic] *Mythology*. See Staff's Brief at 13 and n.4. Yet Staff's long stretch for a
4 mythological analogy is silly and makes no sense: a planning area is not "an ox hide," the
5 Commissioners are not the gullible local rulers of "the Libyan coast" who are "bound" by an
6 agreement with the parties, and Arizona Water Company is not "the Phoenician Queen
7 Dido." *Id.* The parties have not sought to found a city-state or establish an empire, but have
8 instead simply asked the Commission to approve their Settlement of a dispute for a number
9 of cogent reasons. Carthage, ox hides, and Queen Dido have nothing to do with the parties'
10 request, and Staff seems to be grasping at straws, with nothing more than such analogies as a
11 basis for its positions.

12 The Planning Areas for which the parties seek Commission approval are not CCNs,
13 do not require Arizona Water Company or Global to serve in the particular area, and do not
14 prevent any other utility from potentially serving the area. The many benefits of the
15 Commission approving the Planning Areas, several of which Staff itself has recognized, far
16 outweigh any of the speculative and unlikely drawbacks now put forth by Staff. It makes
17 good policy sense for the Commission to encourage effective master planning, as Arizona
18 law requires for cities and towns beyond their present boundaries. Commission approval of
19 the Planning Areas in the Settlement not only achieves that objective, but also resolves a
20 contentious and expensive dispute between two of the largest private water utilities in the
21 state. None of the arguments presented by Staff addresses, let alone rebuts, these
22 fundamental benefits of the Settlement and the Planning Areas.

23 Staff's quotation from the testimony of William Garfield on the benefits of approving
24 the planning areas, Staff Brief at 14, undermines, rather than supports, Staff's argument.
25 Staff observes, in a cryptic comment, that "Clearly, the utilities anticipate some implication
26 of prudence to attach to company decisions made within approved planning areas." Staff
27 Brief at 14. As with its mythological analogy, Staff's argument makes no sense. The
28 Commission already encourages utilities to plan ahead and make prudent decisions.

1 Likewise, Arizona Water Company has a 50-year-plus record of making prudent decisions.
2 Staff, instead of criticizing the Settlement and Planning Areas for providing “some
3 implication of prudence,” should favor the Settlement and the agreed Planning Areas as
4 themselves constituting prudent decisions to resolve the dispute between Arizona Water
5 Company and Global and to appropriately plan for the future.

6 Staff again argues that Commission approval of the Settlement is “unnecessary,”
7 referencing a service territory letter agreement between Johnson Utilities, Inc. and
8 Diversified Water Company. Staff Brief at 14. Staff’s reliance on the Johnson/Diversified
9 agreement is misplaced, as Arizona Water Company has shown in prior briefing and
10 testimony. Staff presented no evidence that the Settlement between Global and Arizona
11 Water Company is comparable in any way to the agreement between Johnson and
12 Diversified, which involved a much smaller area. *See* Joint Settlement Statement of Johnson
13 Utilities Company and Diversified Water Utilities, Inc., Docket No. W-02859A-04-0844,
14 filed June 30, 2005, Exhibit A. There is no suggestion in that docket that the
15 Johnson/Diversified settlement raised the antitrust issues raised here, and there is no
16 indication that the antitrust issues were explored in that proceeding.

17 Moreover, the parties in Docket No. W-02859A-04-0844 did not ask for explicit
18 Commission approval but merely requested that the Commission “acknowledge the efforts
19 of the Companies and find that the Letter of Mutual Understanding, Cooperation and
20 Settlement is consistent with the public interest.” *Id.* at 3. The Commission referenced
21 details of the Johnson/Diversified settlement with implicit approval, and never presented any
22 substantive arguments against granting Commission approval of the Johnson/Diversified
23 settlement. *See* Decision No. 70181 (February 27, 2008) at 2, 5, 7-8. Moreover, the
24 Commission ultimately granted CCN extensions to both Diversified and Johnson consistent
25 with their agreed settlement map, and the parties never appeared to seek the Commission’s
26 explicit approval of their settlement, as Global and Arizona Water Company do here. *See*
27 Decisions No. 68960 (Sept. 21, 2006); Decision No. 70181 (February 27, 2008). Nothing
28 about the Diversified/Johnson settlement suggests that the Commission should refuse to

1 approve the Settlement between Global and Arizona Water Company; if anything, the
2 Commission's actions in those dockets are consistent with a specific approval of the
3 settlement in those cases. There is not a hint of any precedent that "the Commission does
4 not approve settlements or planning areas" in any of the Diversified/Johnson Utilities
5 decisions.

6 Staff's argument concerning the antitrust concerns raised by the Settlement appears to
7 misunderstand the scope of antitrust liability. Staff argues, for example, that the parties'
8 antitrust concerns are "not compelling as the suggested treatment would not forestall
9 nonparties from applying for service territory within the planning areas." Staff Brief at 14.
10 However, even though nonparties to the Settlement could still apply for CCNs within the
11 proposed planning areas regardless of whether the Commission approves the Settlement, that
12 fact has no effect at all on potential challenges by developers or competing utilities. *See,*
13 *e.g., Community Builders, Inc. v. City of Phoenix*, 652 F.2d 823 (9th Cir. 1981)(developer
14 contended that settlement agreement between two water providers violated the federal
15 antitrust laws); *Wall v. City of Athens, Georgia*, 663 F. Supp. 747 (M.D. Ga.
16 1878)(customers sued public water utilities for alleged antitrust violations). Commission
17 approval of the Settlement would officially bestow public policy acceptance on the parties'
18 actions, and would allow Arizona Water Company and Global as necessary to argue that
19 state action protects their agreement, all without preventing the nonparty utility from
20 presenting arguments for granting it the CCN.

21 Staff also argues that "there is no tangible purpose served by approving the
22 agreement that the utilities are not able to obtain through their own devices." Staff Brief at
23 14. Staff's argument is faulty. Arizona Water Company and Global cannot provide
24 themselves with state action immunity for their agreement; only the Commission can do that
25 through approval and active supervision of the parties' actions required in the Settlement.

26 Staff also makes the counterintuitive argument that the Commission should not
27 approve the Settlement *because* the Settlement is beneficial: "both utilities acknowledge
28 that there are benefits to each of them having the planning areas even if the Commission

1 does not approve them. . . . Clearly, both utilities perceive benefits to continuing the
2 agreement regardless if the Commission formally approves it.” Staff’s Brief at 14-15. Of
3 course there are benefits to the Settlement, but that is a reason for the Commission to
4 approve the Settlement, not a reason for disapproval. Moreover, Commission approval of
5 the Settlement would greatly increase the benefits resulting from the Settlement.

6 Finally, Staff contends that “there is little discernible benefit to approving the
7 settlement or the planning areas that the utilities cannot achieve on their own. The touted
8 public interests that the agreement advances can be achieved without Commission approval
9 of the planning areas” Staff Brief at 15. Staff’s argument is contradicted by the
10 testimony and other evidence in this matter, including Staff’s own testimony. Staff itself
11 agrees that Commission approval would provide numerous benefits, stating that “The benefit
12 of Commission approval would be to instill more confidence in the enforceability of the
13 Agreement, reduce potential disagreements and support for long term planning.” Ex. S-2,
14 attached Staff Report at 2; *see also* Staff’s Brief at 13 (“Staff sees benefits to resolving the
15 complaint and aiding efforts to plan capital improvements”). Moreover, Staff’s argument
16 completely ignores the benefits of Commission approval of the Settlement. To claim that
17 Arizona Water Company and Global can “achieve [these benefits] on their own” without
18 Commission approval of the Settlement is simply wrong.

19 **II. STAFF’S EXCLUSIVE FOCUS ON REQUESTS FOR SERVICE**
20 **FRUSTRATES AND DEFEATS THE PUBLIC INTEREST.**

21 **A. Commission Approval of Arizona Water Company’s CCN Extension**
22 **Request Would Serve the Public Interest.**

23 Staff correctly states in its heading “A. Approving CC&N Extensions Requires
24 Examining the Public Interest,” and further asserts that “The manner in which the public
25 interest is demonstrated may vary with the circumstances.” Staff Brief at 4. Arizona Water
26 Company wholeheartedly agrees the public interest must be considered when granting a
27 CCN extension. However, Staff’s assertions about the public interest make it all the more
28 remarkable that Staff has in this instance ignored the general plans of the cities and county,

1 as well as numerous requests for water service from landowners. Staff also ignores the
2 engineering efficiencies resulting from approval of Arizona Water Company's CCN
3 extension request, including, for example, the efficiencies resulting from consolidation of
4 the Casa Grande and Stanfield systems. In contrast, the public interest is not served by the
5 creation of piecemeal CCNs and fragmented water systems, as would result if the
6 Commission were to follow Staff's recommendations.¹

7 Staff also downplays its own nine-factor test for determining whether a CCN
8 extension request should be granted in the public interest without a request for service, *see*
9 Staff Brief at 5, stating only that "it has at times used a nine factor guideline for determining
10 whether to recommend CC&N extensions." *Id.* at 6. It was Staff which promulgated the
11 nine-factor test, not the utilities, and Staff offers no explanation for dropping the test here
12 other than noting that the Commission has not specifically adopted the test as it would a rule
13 or regulation. *Id.* at 7.

14 In demanding acre-by-acre requests for service, Staff relies on two prior decisions
15 involving Arizona Water Company, Decision No. 69163 (Dec. 5, 2006) and Decision No.
16 69386 (March 22, 2007), and a decision involving Trico Electric Cooperative, Decision No.
17 69382 (March 22, 2007). *See* Staff Brief at 5, 7. However, none of these decisions supports
18 Staff's demands for "refreshed" requests for service and "matching" requests for wastewater
19 service. In short, Staff's demand for "refreshed" requests for water service and parallel
20 wastewater service requests is an unprecedented departure from longstanding practice that is
21 not supported by Commission decisions or policy.

22
23 ¹ Staff recommends extension of Arizona Water Company's CCN *only* to parcels 4, 5,
24 6, 7, 8, 9, 12, 15, and 19 on Ex. S-8, *see* Staff Brief at 10 n.1, which would result in a
25 fragmented and patchwork system. *See* Ex. S-8. For example, Staff recommends
26 extension of Arizona Water Company's CCN to parcels 8 and 9, but not to the gap in
27 between them. The Casa Grande and Stanfield systems would remain disconnected,
28 even though the State Land Department, which owns parcel B between the two
systems, has requested water service. Staff's recommendation results in numerous
other inefficiencies, as detailed at the hearing and in Arizona Water Company's
Opening Brief.

1 Staff's reliance on recent rule changes is also unfounded. Staff Brief at 7. Staff
2 argues, for example, that Commission rules "require that substantial and specific written
3 notice be provided for each property owner who has not requested service when there is an
4 application for a CC&N extension." Staff Brief at 7 (citing Decision No. 70625 (November
5 19, 2008)). However, none of the recent rule changes requires requests for service from
6 every landowner within the proposed CCN extension area, nor do the rule changes require
7 "matching" water and wastewater requests. The recent rule changes resulted from a two-
8 year process involving extensive consideration by the Commission, with ample input from
9 Staff and from the public, but Staff's demands in this matter far exceed the new
10 requirements under revised R14-2-402 and would frustrate the inherent planning focus the
11 new rules require. If the Commission believed that Staff's new requirements were good
12 policy, the Commission would have included them in the new rules -- but the Commission
13 did not do so. Staff also fails to recognize that Arizona Water Company has provided
14 substantial written notice of its CCN extension application to the property owners in the area
15 and that not a single landowner objected to Arizona Water Company's Application.

16 Staff's discussion of the public interest also disregards another of Staff's prior
17 policies. In Decision No. 70181 (February 27, 2008), the Commission noted that "Staff
18 testified that granting the CC&N extension as to the state trust land would add value to the
19 state trust land Staff further testified that it is Staff's policy to recommend approval of
20 CC&N extensions into state trust land when requested, . . . even if there has not been a
21 specific request for service to the state trust land." *Id.* at 8, ¶ 24. In this instance, Staff
22 recommends *against* approval of a CCN extension into state land even though the state has
23 requested water service, on the single ground that the state did not also request sewer
24 service. Tr. 356-59.

B. Staff's Requirement for "Refreshed" Requests for Service and "Matching" Requests for Wastewater Service Fails to Serve the Public Interest.

For Staff, requests for water service, "refreshed" requests for service, and even "matching" requests for wastewater service have suddenly become the sole and exclusive indicator of the public interest, at least as applied to Arizona Water Company and Global in this matter. *See* Staff Brief at 7. However, Staff's newly-hatched and short-sighted requirements have no basis in Arizona statutes, case law, or regulations, and in fact frustrate effective planning and the public interest. Staff's requirements regarding requests for service effectively put Staff in the position of second-guessing the landowners who have made legitimate requests for service to the utilities from which they desire service, now only to suffer rejection when Staff deems the landowner's written request to be inconsistent with a previously unstated and unenforced policy.

When attempting to justify its demand for "updated" or "refreshed" requests for service, Staff argues that economic circumstances have changed and "Confining the extension of CC&Ns to only those areas where there are updated requests for service appropriately prevents against the premature grant of a CC&N before a need exists." Staff's Brief at 8. Staff's argument on this point amounts to pure conjecture. Staff has not conducted any economic studies and has not contacted the property owners who already requested service. Tr. 333-34. Instead, Staff simply speculates that, based on the passage of some vague and arbitrarily determined amount of time, the need for service must no longer exist, and that the grant of a CCN can be "premature" even where all other planning, efficiency, rate and engineering factors clearly demonstrate that a CCN is in the public interest. Thus, Staff has placed itself, rather than the landowners, planning authorities, and other stakeholders, in the position of deciding "who will really want and need service going forward." Staff's Brief at 8 (quoting Bob Gray at Tr. 334).

Staff's demand for "matching" water and wastewater requests is also a new requirement on the part of Staff that results in Staff second-guessing the needs and development plans of landowners. Rather than accepting that a landowner understands its

1 own business when requesting water service (and even providing an “updated” request for
2 water service), Staff opines that “the lack of an updated request for service for both classes
3 of utility service raises the question of whether an extension of CC&Ns to these areas is
4 necessary.” Staff Brief at 8 (brackets removed). According to Staff, the lack of “matching”
5 requests “casts significant doubt on the firmness of any plans to develop and hence
6 undermines the suggestion that a tangible need exists.” *Id.* at 9. As with the issue of
7 “updated” requests, Staff’s position on “matching” requests is not based on any studies or on
8 any communications with the affected landowners, but rather on Staff’s pure speculation.
9 Staff’s assumption is particularly questionable when the State itself has requested water
10 service – and Staff recommends against an extension of Arizona Water Company’s CCN to
11 State land on the grounds that the lack of a wastewater request “suggests” that the State’s
12 plans are not sufficiently “firm” or “tangible.” *Id.*

13 Staff’s reliance on the Woodruff example, Decision No. 68453 (February 2, 2006), is
14 also misplaced. Under the Recommended Opinion and Order of Administrative Law Judge
15 Marc E. Stern, wastewater service for the Sandia development would have been provided by
16 Woodruff Utility Company, while Arizona Water Company would have provided water
17 service. See Decision No. 68453, ¶ 76 (noting that Arizona Water Company could set up a
18 combined billing with WUC “to achieve an economy of scale and lower billing costs for
19 WUC”). Thus, there was no issue concerning “the absence of a clear sewer provider under
20 AWC’s approach,” as claimed by Staff – it was always going to be the case that Woodruff
21 Utility Company would provide such service. Staff’s Brief at 9.

22 Moreover, in the section of Decision No. 68453 cited by Staff, the Commission found
23 that “The benefits of developing and operating integrated water and wastewater utilities *in*
24 *this instance* outweigh the economies imputed to AWC’s larger scale.” *Id.* at 29:4-6
25 (emphasis added). The considerations that led the Commission to award the water CCN to
26 Woodruff for the Sandia development (and to Arizona Water Company in adjacent areas) in
27 that instance have nothing to do with Staff’s demand for “matching” water and wastewater
28 requests. The existence of a “matching” wastewater request here does not mean that the

1 water and wastewater utilities will be “integrated” as they purported to be in one part of the
2 Woodruff case, and the provision of the Settlement under which Global agrees to supply
3 reclaimed water to Arizona Water Company effectively achieves all of the Commission’s
4 goals about the efficient and beneficial use of that water resource.

5 Staff also demands “a sufficient indication of certainty that wastewater service will be
6 provided,” while ignoring the sufficiency of approved Section 208 plans for the City of Casa
7 Grande and Global that cover the relevant area. Staff Brief at 9. Staff further contends that
8 the approved 208 plans do not “rise to the level of creating a like obligation to serve”
9 *Id.* Arizona Water Company never argued that a Section 208 plan created an *obligation* to
10 serve as wastewater provider. Moreover, Staff misunderstands the level of certainty which a
11 Section 208 plan does supply. Federal law provides that a Section 208 plan “shall include”
12 an “identification of those agencies necessary to construct, operate, and maintain all
13 facilities required by the plan and to otherwise carry out the plan.” 33 U.S.C.
14 § 1288(b)(2)(D). The Governor is required to certify the plan and submit it to the
15 Environmental Protection Agency for approval, 33 U.S.C. § 1288(b)(3), and the EPA may
16 withdraw its approval if it determines that the state is not administering its programs in
17 accordance with the plan. *See* 33 U.S.C. § 1288(b)(4)(D)(i). Staff’s assertion that this
18 elaborate joint federal and state program fails to provide “a sufficient indication of certainty”
19 lacks merit. As set forth in the hearing, Section 208 areas provide strong evidence of the
20 ability of the designated provider’s readiness to provide wastewater service.

21 Staff also argues that “Section 208 plans are subject to potential amendment,” as if
22 this disqualified them from the Commission’s consideration. Staff’s Brief at 10. Staff is
23 demanding a level of certainty that does not exist in the real world. True, Section 208 plans
24 can be amended -- as can CCNs, statutes, regulations and even the state and federal
25 constitutions. Staff’s refusal to recommend approval of CCN applications based on the
26 possibility of potential future amendments to other plans would effectively prevent any
27 development from ever being constructed. Thus, Staff’s expressed concern that properties
28

1 located in the Section 208 plan areas of Global and the City of Casa Grande do not have
2 enough certainty of receiving wastewater service is unfounded.

3 **C. Staff's Recommendations Regarding Arizona Water Company's CCN**
4 **Extension Application Are Inconsistent With the Public Interest.**

5 Staff readily acknowledges that Arizona Water Company has both the technical
6 expertise and the financial resources to provide public utility water service within its
7 requested CCN extension area. Staff Brief at 10. Yet despite these findings, Staff
8 recommends extension of Arizona Water Company's CCN to only nine parcels (amounting
9 to 3,449 acres), or approximately 6% of Arizona Water Company's total requested extension
10 area. *Id.* In making this recommendation, Staff ignores existing written requests for water
11 service covering more than 11,000 acres, *id.*, as well as compelling evidence of engineering
12 efficiencies, economies of scale, and other reasons that would support extension of a CCN
13 without a written request for service for every square foot included in the CCN.

14 Staff contends that this "application presents an opportunity to focus specifically on
15 how to construe 'how old is too old.'" Staff's Brief at 11. Staff continues its geriatric
16 analogy by suggesting that development in Pinal County is on its deathbed: "The course of
17 events on the larger economic stage makes all the more apparent the appropriateness of
18 taking the pulse of the parties requesting service to determine if there remains any life in the
19 assertions of need." *Id.* at 12. However, Staff's suggestion that the need for water service
20 has expired is based on nothing more than speculation, and ignores the fact that economic
21 activity and development will inevitably resume in the relevant areas of Pinal County, and
22 that utilities and landowners who are proactively planning for such inevitable growth should
23 be supported and not rejected. To ignore pending requests for service and deny Arizona
24 Water Company's application for extension of its CCN under the circumstances presented in
25 its Application sends a message that the Commission seeks to thwart proactive planning and
26 wishes to delay and hinder landowners who plan to develop their property.

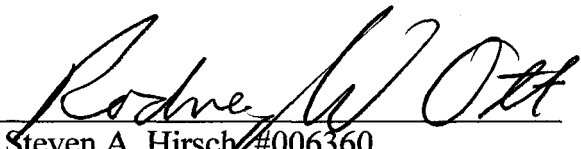
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CONCLUSION

For the foregoing reasons, and based on the pre-filed testimony, witnesses' testimony and exhibits presented at the hearing in this matter on June 8-9, 2009, the Commission should grant Arizona Water Company's application to extend its CCN to the requested area. The Commission should also approve the Settlement between Arizona Water Company and Global and the Planning Areas agreed to in the Settlement.

RESPECTFULLY SUBMITTED this 31st day of August, 2009.

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filed this 31st day of August, 2009 with:

Docket Control Division
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1 **COPY** of the foregoing hand-delivered
2 this 31st day of August, 2009 to:

3 Dwight D. Nodes
4 Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
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8 Phoenix, Arizona 85007

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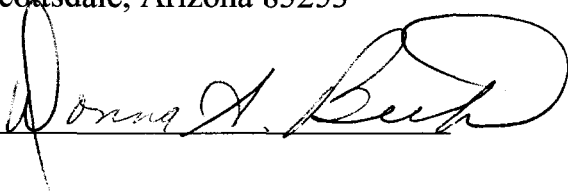
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